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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/081,020	02/21/2002	Kin Chung Fung	3183.1000-001	1663
21005 . 7590 04/12/2007 HAMILTON, BROOK, SMITH & REYNOLDS, P.C. 530 VIRGINIA ROAD P.O. BOX 9133 CONCORD, MA 01742-9133			EXAMINER TARAE, CATHERINE MICHELLE	
			ART UNIT	PAPER NUMBER
			3623	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		04/12/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/081,020

Applicant(s)

FUNG ET AL.

Examiner

C. Michelle Tarae

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44 and 60-75 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-44 and 60-75 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The following is a Final Office Action in response to the communication received on January 11, 2007. Claims 1-75 are pending in the application. Claims 45-59 have been previously withdrawn from further consideration. Claims 1-2, 5-6, 9, 19-20, 24, 33, 35, 60, 64-65 and 73-75 have been amended. Claims 1-44 and 60-75 are rejected below.

Response to Amendment

2. Applicant's amendment to claims 1-2, 5-6, 9, 19-20, 24, 33, 35, 60, 64-65 and 73-75 is acknowledged. The amendment to claim 6 is sufficient to overcome the claim objection set forth in the previous Office Action; therefore, the claim objection to claim 6 is withdrawn. The amendment to claim 24 is sufficient to overcome the 35 U.S.C. 112, second paragraph, rejection set forth in the previous Office Action; therefore, the 35 U.S.C. 112, second paragraph, rejection to claim 24 is withdrawn.

Response to Arguments

3. Applicant's arguments are moot in view of the new grounds of rejections provided below.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-40, 44, 60-70 and 72-75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ibarra (U.S. 6,119,097) and Matsko (U.S. 6,970,810).

As per claim 1, Ibarra discloses a method for measuring and analyzing performance comprising:

collecting transaction data indicative of performance factors (col. 6, lines 15-27; Figure 2; A manager inputs an employee's review indicative of the employee's performance. The employee is reviewed against identified performance standards.);

analyzing the collected transaction data to compute an aggregate synopsis of performance of a subject under observation (col. 6, lines 53-60; The performance review from the manager is analyzed to determine whether a problem solving work session is required.);

hypothesizing using the aggregate synopsis, said hypothesizing developing a hypothesis for improvement, the hypothesis determining at least one of a plurality of recommended actions (col. 7, lines 1-7 and 55-61; An agreed upon action between a manager and an employee is determined in a problem solving session.);

applying the determined recommended actions to the subject under observation (col. 7, lines 1-7 and 55-61); and

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measuring a change in the performance as a result of the subject under observation applying the determined recommended actions (col. 7, lines 3-5; col. 8, lines 5-9; The actions are determined to improve an area the employee received a substandard score.).

Ibarra does not expressly disclose measuring and analyzing performance of a store, or that the transaction data includes *store sales activity including customer visit count data, the collected transaction data being* indicative of store performance factors. Matsko discloses measuring and analyzing performance metrics of a retail store (col. 1, lines 19-23), and storing sales activity including the amount of customer purchases/transactions at the POS, which can be used to count customer visits (col. 5, lines 9-18; col. 8, line 49-col. 9, line 8; col. 10, lines 25-31; Figure 3b). However, Ibarra does disclose measuring performance of an employee where the employee is a salesperson (col. 4, lines 23-26). Both Ibarra and Matsko are analogous in that each teaches measuring and analyzing performance factors of a person so as to determine ways of improvement of the performance. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify Ibarra's teaching of quantification of performance factors to include retail performance and retail workers' performance because doing so allows Ibarra to have a specific application to the retail industry, thereby expanding its performance metrics analyses to retail store and retail worker performance. Tracking performance metrics of a retail store and its workers is important as performance of both affects overall store profitability (see Matsko, col. 1, lines 27-32).

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As per claim 2, Ibarra discloses the method of claim 1 wherein measuring a change in performance further comprises repeating the collecting, analyzing, hypothesizing, and applying in an iterative manner (col. 9, lines 21-24; After an initial performance review, a manager is prompted to enter when the next performance review will occur.).

As per claim 3, Ibarra discloses the method of claim 1 wherein hypothesizing further comprises:

comparing the aggregate synopsis to performance scores within a predetermined performance range (col. 5, lines 8-12; col. 6, lines 55-60; Employees' scores are compared to minimum, expected and outstanding levels.); and

mapping the aggregate synopsis to the plurality of recommended actions based on the predetermined performance range (col. 7, lines 8-10; col. 8, lines 1-5; Performance scores that are below the minimum levels are identified as requiring problem solving sessions, or recommended actions.).

As per claim 4, Ibarra discloses the method of claim 3 wherein comparing further comprises providing a set of performance standards, each of the performance standards corresponding to at least a portion of the aggregate synopsis, the performance standards for determining a ranking within the predetermined performance range (col. 7, lines 8-10; col. 8, lines 1-5; Performance scores that are below the minimum levels are identified as requiring problem solving sessions, or recommended actions; thus, the performance scores correspond to the aggregate synopsis.).

As per claim 5, Ibarra discloses the method of claim 4 wherein the subject under observation further comprises a sales employee, the sales employee having a plurality of levels and the performance standards defined for each of the plurality of levels (col. 4, line 25; Figure 10; In Figure 10 is illustrated performance standards for minimum, expected and outstanding levels for a car salesman.).

As per claim 6, Ibarra discloses the method of claim 4 wherein the performance standards correspond to a subset of a predetermined set of customer focused skills attained by the sales employee (col. 8, lines 47-48 and 59-67; Figures 10-11; Customer focused skills such as sales achievement and percent of closed phone calls are used in determining the performance standards.).

As per claim 7, Ibarra discloses the method of claim 4 wherein the performance standards further comprise a scaling matrix operable to scale the performance scores, (col. 11, lines 32-40; A rating scale is used against the performance scores.). Ibarra does not expressly disclose the scaling matrix having scaling factors corresponding to *store characteristics* pertinent to the transaction data. However, since Ibarra does disclose the system being used for salespeople in a car dealership (col. 4, lines 23-25), at the time of the invention, it would have been obvious to a person of ordinary skill in the art for the system of Ibarra to take into consideration store characteristics as the characteristics of car dealerships can vary greatly, thereby incorporation of the store characteristics would help the accuracy of the analysis of a salesperson's performance. For example, if car dealership A generally has more sales volume than car dealership

B, the performance standards for salespeople at each car dealership can be scaled to account for the disparity in sales volume.

As per claim 8, Ibarra does not expressly disclose the method of claim 7 wherein the scaling factors further comprise store volume, store location, and timing. However, since Ibarra does disclose the system being used for salespeople in a car dealership (col. 4, lines 23-25), at the time of the invention, it would have been obvious to a person of ordinary skill in the art for the system of Ibarra to take into consideration scaling factors such as scaling factors further comprise store volume, store location, and timing as the characteristics of car dealerships can vary greatly, thereby incorporation of store volume, store location, and timing would help the accuracy of the analysis of a salesperson's performance. For example, if car dealership A generally has more sales volume than car dealership B, the performance standards for salespeople at each car dealership can be scaled to account for the disparity in sales volume.

As per claim 9, Ibarra discloses the method of claim 3 further comprising setting timely performance goals corresponding to the subject under observation, and adjusting the predetermined performance range in response to the performance goals (col. 4, lines 44-45 and 50-51; Figure 10).

As per claim 10, Ibarra discloses the method of claim 9 wherein setting the timely performance goals further comprises setting goals according to at least one of daily, weekly, monthly, quarterly and yearly intervals (col. 4, lines 44-45 and 50-51; Figure 10).

As per claim 11, Ibarra discloses the method of claim 9 further comprising establishing a staffing profile operable to attain the timely performance goal, the staffing profile indicative of optimal staffing levels for each of the sales employee levels (col. 4, lines 37-39 and 40-42; col. 5, lines 1-12; Figure 10; The determination of performance standards, or levels, is conveyed to employees so that they are aware of the desired/required performance levels expected of them. The performance levels are established to achieve a desired performance goal.).

As per claim 12, Ibarra discloses the method of claim 1 wherein the transaction data further comprises external legacy data, field performance data, and training data (col. 6, lines 41-47; Figures 3 and 10; A variety of data is used in the system including performance data and sales data.).

As per claim 13, Ibarra discloses the method of claim 12 wherein the field performance data further includes data indicative of least one of sales per hour (SPH), dollars per transaction (DPT), units per transaction (UPT), transactions per hour (TPH), traffic conversion percentage, customer traffic count, and periodic goals (Figure 10; The performance standards worksheet includes sales.).

As per claim 14, Ibarra discloses the method of claim 12 wherein the external legacy data further includes at least one of administrative data, accounting data, tax data, market research data, merchandise grouping data, human resource data, and store revenue goal data (Figure 6; The established performance standards may be considered as administrative data.).

As per claim 15, Ibarra discloses the method of claim 1 wherein the aggregate synopsis further comprises report results corresponding to quantitative data (col. 10, lines 15-25; Figure 10; The performance appraisal is a report.).

As per claim 16, Ibarra discloses the method of claim 1 wherein the transaction data corresponds to retail stores and sales employees (col. 4, lines 24-25).

As per claim 17, Ibarra discloses the method of claim 1 wherein applying the determined recommended actions further comprises skill development at a sales employee level and business scenarios and strategies at a store level (col. 7, lines 57-61; col. 8, lines 45-48; A recommended action may be to improve upon an employee's performance factor, such as skill.).

As per claim 18, Ibarra discloses the method of claim 1 wherein the hypothesizing further comprises hypothesizing business scenarios and the recommended actions comprise strategies to improve business operations and staffing profiles for increased sales (col. 5, lines 20-30 and 45-52; The recommended actions are identified such that the employee's performance is improved.).

As per claim 19, Ibarra discloses the method of claim 18 wherein the staffing profile further comprises an optimal aggregation of sales employees of different skill levels (Figure 8 shows sales employees at different skill levels, as indicated by their different performance standards scores.).

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Claims 20-21, 25-40, 44, 60-63, 65-70 and 72-75 recite substantially similar subject matter as claims 1-19 above. Therefore, claims 20-21, 25-40, 44, 60-63, 65-70 and 72-75 are rejected on the same basis as claims 1-19 above.

Additionally, as per claim 22, Ibarra discloses a security schema operable to provide selective access to the transactional data, selective access determined as a function of a need to know and of a user's store manager role within the sales organization (col. 9, lines 33-37; col. 10, lines 48-50).

Additionally, as per claim 23, Ibarra discloses a learning center adapted to implement the determined recommended actions (col. 7, lines 49-67; A problem solving session is a learning center in that it is used to determine recommended actions.).

Additionally, as per claim 24, Ibarra discloses wherein the feedback mechanism is further operable to monitor an advancement cycle of a sales employee based on the gathered transactional data and management certification (col. 5, lines 20-30; Figures 3, 10 and 12; An employee's performance is reviewed on a periodic basis (i.e., monthly) to monitor decline or improvement (i.e., advancement) of the employee, thereby monitoring an advancement cycle of the employee.).

Claim 64 recites substantially similar subject matter as claims 22-24 above. Therefore, claim 64 is rejected on the same basis as claims 22-24 above.

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6. Claims 41-43 and 71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ibarra (U.S. 6,119,097) and Matsko (U.S. 6,970,810), as applied above, and further in view of Osborne et al. (U.S. 6,589,055).

As per claims 41-43, the combination of Ibarra and Matsko does not expressly disclose the system of claim 20 wherein the plurality of recommended actions further correspond to a library of multimedia solutions, the multimedia solutions adapted to provide educational development of skill and knowledge; wherein the multimedia solutions further comprise a curricula of educational coursework materials; or wherein the multimedia solutions further comprise interactive and passive delivery and feedback mediums including magnetic, optical, and printed materials. Osborne et al. discloses the use of multimedia material to train employees (col. 3, lines 31-36; col. 4, lines 30-35; col. 7, lines 42-58). At the time of the invention, it would have been obvious to a person of ordinary skill in the art for the combination of Ibarra and Matsko to utilize a library of multimedia educational materials for employees, particularly, since Ibarra discloses a problem solving session used to determine an action that will improve the employee's performance in an area, because the library would enhance the problem solving session conducted in Ibarra by providing employees with training materials specific to the identified problem area of the employee.

Claim 71 recites substantially similar subject matter as claims 41-43 above.

Therefore, claim 71 is rejected on the same basis as claims 41-43 above.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Engler et al. (U.S. 6,633,851) discusses generating customer reports based on POS data;
- Matsko et al. (U.S. 7,093,748) discusses tracking retail performance metrics.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Michelle Tarae whose telephone number is 571-272-

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6727. The examiner can normally be reached Monday – Friday from 8:30am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz, can be reached at 571-272-6729.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


C. MICHELLE TARAE
PRIMARY EXAMINER

April 6, 2007